United Nations A/67/305

General Assembly

Distr.: General
13 August 2012

Original: English

Sixty-seventh session
Item 70 (c) of the provisional agenda*
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Independence of judges and lawyers

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, submitted in accordance with resolution 17/2 of the Human Rights Council.

* A/67/150.

12-46184 (E) 110912

Please recycle

Report of the Special Rapporteur on the independence of judges and lawyers

Summary

The present report addresses two aspects of the phenomenon of corruption: judicial corruption; and combating corruption through the judicial system.

The first part presents an analysis of the effects of judicial corruption, as well as the elements necessary to safeguard the judiciary and judicial actors from conditions conducive to corruption and strengthen their capacity to counter and combat all manifestations of judicial corruption. Given that the judicial system serves to check the other public institutions, a judiciary that is independent and not corruptible is paramount in upholding the rule of law and human rights and monitoring the appropriate performance of public functions.

Because of such attributes, the judicial system is also in an ideal position to reinforce the combat against the wider phenomenon of corruption. In this regard, there is an elaboration in the second part of the report on the role of the judiciary and other actors in the justice system in effectively combating corruption. The importance of respect and support for the independence of judges, prosecutors and lawyers and the separation of powers is underlined, as is the need for institutional and efficient security for all actors in the justice system, especially when dealing with cases of so-called grand corruption.

The report concludes with a series of recommendations, which the Special Rapporteur indicated should be read in the light of previous reports on the independence of judges, prosecutors and lawyers. She believes that those recommendations should be placed at the centre of policies of States and other actors that are aimed at preventing and combating corruption and strengthening the rule of law.

Contents

		Page
I.	Introduction	3
II.	Activities of the Special Rapporteur	4
III.	Judicial corruption	4
	A. Context and framework	5
	B. Consequences of judicial corruption	8
	C. Safeguards against judicial corruption	10
IV.	Combating corruption through the judicial system	18
V.	Conclusions	21
VI.	Recommendations	22

I. Introduction

1. The prevalence of corruption and the deleterious effects that it has on economic and social development has become an increasingly important issue for States and the international community alike. There have been many diverse attempts to address this phenomenon but the results are mixed. It seems however that few concerted efforts have so far addressed judicial corruption as a separate and distinct issue with its own unique requirements, and with the direct involvement and participation of the actors in the judiciary.

2. The existence of corruption in the judiciary, which is being denounced by stakeholders across both the public and private sectors, directly undermines the rule of law and the ability of the judiciary to guarantee the protection of human rights. This realization has placed the focus in many States on issues of judicial accountability and the need for detailed principles to guide the execution of the judicial function. In such an environment, the Bangalore Principles for Judicial Conduct (E/CN.4/2003/65, annex) were drafted and adopted by judges of different States and legal traditions to provide guidance on universal judicial ethics and strengthen judicial integrity. The Bangalore Principles have been accepted gradually by different sectors of the judiciary, culminating in States adopting them at the national level or modelling their own principles of judicial conduct on them.

3. Section III includes an analysis of the effects of judicial corruption and the parameters necessary to safeguard the judiciary and judicial actors from conditions conducive to corruption and strengthen their capacity to counter and combat all manifestations of judicial corruption. The Special Rapporteur addresses in particular the existing tension between judicial independence and judicial accountability. Given that the judicial system serves to check other public institutions, a judiciary that is independent and not corruptible is fundamental in upholding the rule of law and human rights and monitoring the appropriate performance of public functions.

4. Because of these attributes, the judicial system is in a position to investigate, prosecute and punish acts of corruption. Section IV includes an elaboration of this essential role of the judiciary and other actors in the justice system. The importance of respect and support for the independence of judges, prosecutors and lawyers and the separation of powers is highlighted, as is the need for institutional and efficient security for all actors in the justice system, especially when they are dealing with cases of so-called grand corruption.

5. The Special Rapporteur has endeavoured to address the different factors that enable judicial corruption to grow and the measures that can and should be taken to prevent and combat corruption within the State and in the justice system. The analysis and recommendations are based on the international standards of the independence of judges, prosecutors and lawyers, which together with national and international legislation on corruption provide adequate guidance on how to tackle issues related to judicial corruption while respecting the independence of the judiciary and human rights.

II. Activities of the Special Rapporteur

6. The activities carried out by the Special Rapporteur since the previous report to the General Assembly are listed in her report to the Human Rights Council (A/HRC/20/19). Since then, she has participated in various activities, as outlined below.

7. From 4 to 6 May 2012, the Special Rapporteur participated in the annual meeting of the California Academy of Appellate Lawyers, in Carmel, California, United States of America.

8. From 19 to 29 May 2012, she undertook an official visit to Pakistan. The report on that visit will be presented at the Human Rights Council in June 2013. The Special Rapporteur wishes to thank the Government of Pakistan for its excellent cooperation. She also would like to thank the Governments of El Salvador and the Russian Federation for their invitations to visit in the second half of 2012 and in 2013 respectively.

9. From 4 to 6 June 2012, the Special Rapporteur participated as a speaker in two conferences: the first on the role of the Special Rapporteur on the independence of judges and lawyers and universal standards at the Universidad Católica Andrés Bello in Caracas and the second at the forty-eighth Annual Conference of the Inter-American Bar Association on Margarita Island in Venezuela (Bolivarian Republic of).

10. On 25 June 2012, the Special Rapporteur presented her annual thematic report to the Human Rights Council (A/HRC/20/19), as well as reports on her official visits to Romania, Bulgaria and Turkey (A/HRC/20/19 and Add.1-Add.3), in May and October 2011, respectively. Her thematic report focused on the individual and institutional parameters to ensure and strengthen the objectivity, impartiality and independence of prosecutors and prosecution services, as well as their accountability. She also presented an advance report on her global thematic study on human rights education and the training of legal professionals (A/HRC/20/20). During the twentieth session of the Council, on 26 June, she participated as a panellist in a side event on the theme of stoning, focusing on what the actors in the justice system can do, and even have the duty to do, on the issue of the stoning of women.

11. The Special Rapporteur sent visit requests or reminders to the following States in 2011 and 2012: Argentina, China, India, Iran (Islamic Republic of), Malaysia, Maldives, Nepal, Philippines, Togo, United States and Venezuela (Bolivarian Republic of). She wishes to encourage them to consider extending an invitation to visit in the near future. She also wishes to thank the Governments that have already responded positively to her requests for a visit.

III. Judicial corruption

12. Throughout her tenure, the Special Rapporteur has observed corruption as a major obstacle pervading all layers of society. She is particularly concerned about reports of corruption in the judiciary, which threatens the very essence of the independence of the judiciary and the actors in the legal profession. She believes that, while corruption is a multifaceted phenomenon which is difficult to prevent,

detect and sanction, measures can still be taken to provide an environment and conditions in which corruption can be identified and addressed. It is of the utmost importance to establish within those measures, which need to reflect international standards and domestic legal, political, economic, societal and cultural contexts, a specific set of measures aimed at preventing and combating corruption in the judicial system.

13. Corruption is a cross-cutting issue that cannot be overlooked when addressing aspects of the independence of judges and lawyers. Corruption within the judicial system usually undermines the efforts of all other institutions and may lead to impunity (see, e.g., A/65/274, para. 44). At the same time, corruption is insidious and may permeate various sectors of society, whether public, such as the executive and legislative branches of government, or private. All three branches of the State should create mechanisms to implement national and international legislation, but police, prosecutors and judges are in the best position to tackle corruption by adequately investigating, prosecuting and placing sanctions on acts of corruption, whether through the criminal, civil or administrative justice systems.

14. A judiciary of undisputed integrity is an essential institution for ensuring compliance with democracy and the rule of law. The Special Rapporteur shares the view that at both the domestic and global levels even when all other protections fail, the judiciary provides a bulwark to the public against any encroachments on rights and freedoms under the law.[1]

A. Context and framework

15. Preventing and combating corruption has been a major challenge for States. In numerous international documents, corruption has been recognized as a scourge throughout the world. While the scope and extent of corruption is often difficult to grasp, there are certain factors and conditions that have been identified as contributing to the creation of environments in which corruption is allowed to flourish. When such factors are countered, corruption is more easily detected and deterred.

Definition of corruption and context

16. Transparency International defines corruption as "the abuse of entrusted power for private gain".[2] Such a definition therefore includes both financial or material gain and non-material gain. In addition, a distinction is made between grand and petty corruption. Grand corruption involves large sums of money and implies the participation or complicity of highly placed officials. Grand-scale corruption can affect or even jeopardize the entire economy of a particular State. Petty corruption refers to smaller amounts of money, usually involving actors attempting to supplement their low salaries.

17. It is important to note at this stage that cultural and social contexts play an important role in defining what constitutes corruption. Behaviour and conduct can be appraised and interpreted in different ways. In some cultures, certain kinds of

[1] United Nations Office on Drugs and Crime, *Commentary on the Bangalore Principles of Judicial Conduct*, September 2007.

[2] Transparency International, *Global Corruption Report 2007: Corruption in Judicial Systems*.

behaviours, such as gift-giving, will not necessarily be seen as corruption. Thus, the thin line between proper cultural behaviour and corruption becomes blurred. When for various reasons the cultural and social context has integrated certain acts of corruption as acceptable conduct, this will have a serious negative impact on any measures taken to reduce the prevalence of corruption. For instance, in places where wealth is associated with extreme glorification and elevated status, regardless of the manner in which it is obtained, it is unlikely that legislation against corruption will be enforced.

Legal framework

18. The legal framework for the present report is based on article 14 of the International Covenant on Civil and Political Rights, which recognizes the principle of equality of all persons before courts and tribunals and the guarantee of a competent, independent and impartial tribunal established by law, and the United Nations Convention against Corruption (General Assembly resolution 58/4, annex).[3] That Convention is aimed at ensuring the criminalization of a wide range of forms of corruption and obliges Member States to take effective preventive steps to protect the integrity of their institutions and to provide a framework for improved international cooperation.[4] It provides for a non-exhaustive list of specific types or acts of corruption that should be combated and prevented, including bribery, embezzlement, trading in influence, abuse of functions, illicit enrichment, laundering of the proceeds of crime and obstruction of justice.

19. The Special Rapporteur believes that the Convention against Corruption is an important legal instrument containing general provisions on measures for prevention, criminalization and law enforcement, international cooperation, asset recovery, technical assistance and information exchange, all of which involve the public and private sectors, judiciary and prosecution services, as well as the participation of civil society.

20. The Basic Principles on the Independence of the Judiciary, the Bangalore Principles for Judicial Conduct, the Guidelines on the Role of Prosecutors, the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors and the Basic Principles on the Role of Lawyers also form part of the legal framework for combating corruption.

Judicial corruption

21. According to Transparency International, judicial corruption includes any inappropriate influence on the impartiality of the judicial process by any actor within the court system.[2] In 2004, the previous Special Rapporteur noted that the

[3] Other relevant international and regional legal instruments include but are not limited to: General Assembly resolutions 55/25 and 51/191; the African Union Convention on Preventing and Combating Corruption; the Council of Europe's Civil Law Convention on Corruption, its Criminal Law Convention on Corruption, and resolution (97) 24 of the Committee of Ministers of the Council of Europe on the Twenty Guiding Principles for the Fight against Corruption; the Council of the European Union's Framework Decision on Combating Corruption in the Private Sector; the Economic Community of West African States Protocol on the Fight against Corruption; the Organization of American States Inter-American Convention against Corruption; and the Southern African Development Community Protocol against Corruption.

[4] United Nations Office on Drugs and Crime, *Compendium of International Legal Instruments on Corruption*, Second ed., Vienna, 2005.

phenomenon of corruption within the judiciary worldwide went far beyond economic corruption in the form of embezzlement of funds allocated to the judiciary or bribes. In particular, it was pointed out that judicial corruption could concern administration within the judiciary or take the form of biased participation in trials and judgements as a result of the politicization of the judiciary, party loyalties of judges or any type of judicial patronage (E/CN.4/2004/60, para. 39).

22. Judicial corruption extends from pretrial investigations and procedures through the trial proceedings and settlement, to the enforcement of decisions by court bailiffs or the executive.[2] The Special Rapporteur confines her assessment to judicial corruption involving judges, prosecutors and members of the legal profession. While she recognizes that corruption among the police, court personnel and officials in charge of the enforcement of judicial decisions is an issue of utmost importance and is directly related to judicial corruption in a strict sense, the limited length of the present report does not allow for in-depth study of the particular features of the wider scope of corruption with regard to the justice system.

23. To formulate any measures against judicial corruption it is necessary to identify several facets of corruption of judges, prosecutors, lawyers and the system as an institution. Bribery in the form of cash, gifts or hospitality, including sexual favours, dining, entertainment and holidays abroad, have been reported as a direct form of judicial corruption. Favouring a particular law firm, close association with selected lawyers, the promise of opportunities after retirement from either government sources or public corporations, or consultancy work from law firms are the most insidious forms of corruption, and may be more difficult to prevent and detect.

24. There are also some internal factors in the judiciary, for instance exchanging favours between judges at different levels of jurisdiction, nepotism, lack of objective criteria and transparency in the administration of justice (judges' careers, fund and personnel management, case assignments) and lack of accountability, which can all facilitate corruption in the judiciary.

25. According to a 2007 study by Transparency International, two main types of corruption are said to affect judiciaries prevalently: political interference in judicial processes by either the executive or legislative branches of government and bribery. Through political interference, judges and court personnel face pressure to rule in favour of powerful political or economic entities rather than according to the law. Such interference is carried out through a variety of actions, including threats, intimidation, bribery, manipulation of judicial appointments and pressure on salaries and/or conditions of services.[2]

26. According to the same study, bribery can occur at every point of interaction in the judicial system: court officials may extort money for work they should do anyway; lawyers may charge additional "fees" to expedite or delay cases or to direct clients to judges known to take bribes for favourable decisions.[2] Judges themselves can accept bribes to delay or accelerate cases or accept or deny appeals; they can actively seek to influence other judges or simply decide a case in a way that is not in accordance with established legislation and rules.

27. Prosecutors and prosecution services are also the target of such interference and can be pressured to drop investigation or prosecution of cases or to disregard evidence when cases involve high-profile persons.

28. Corruption in the legal profession seems to be less well documented than that of institutional members of the judiciary. This does not mean that lawyers may not actively or passively engage in corruption-related actions or do not have an essential role to play in detecting and combating corruption. In addition, lawyers and law firms can be used as intermediaries in fraudulent business transactions, for example by setting up a legal structure presented as lawful, but that is in fact used for laundering funds. Recently the International Bar Association cooperated with the United Nations Office on Drugs and Crime and the Organization for Economic Cooperation and Development in launching a project entitled "Anti-corruption strategy for the legal profession", an initiative that focuses on the role of lawyers in combating corruption. A survey carried out under the auspices of that initiative revealed that a large number of lawyers indicated they had been approached or knew lawyers that had been approached to be involved as intermediaries in a corruption scheme. A large number of lawyers also indicated they had lost business to corrupt law firms or lawyers.[5]

B. Consequences of judicial corruption

29. According to the Convention against Corruption,

> Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.[6]

While corruption concerns all States, no matter their size or economic situation, it is reported to hurt the poor disproportionately by diverting funds intended for development. Corruption represents "one of the main obstacles to peace, sustainable development, democracy and human rights around the globe".[7]

30. The Special Rapporteur wishes to underline the fact that an independent and honest judiciary will encourage fair competition and economic growth, as there is a clear correlation between the level of economic activity in a country and an effective judiciary combating corruption.

31. One expert summed it up as follows:

> Access to one's universal rights, including the right to the fair, effective and efficient administration of justice, requires an independent, impartial judiciary with integrity that can protect all of the rights of the parties involved, including the universal right to a fair trial. It follows that if the judiciary is corrupt or if corruption impairs any of these universal rights, then basic human rights are being violated.[8]

---

[5] Anti-corruption Strategy for the Legal Profession: "Risk and threats of corruption and the legal profession", Survey and Report, International Bar Association, United Nations Office on Drugs and Crime and the Organization for Economic Cooperation and Development, 2010.

[6] United Nations Office on Drugs and Crime, Foreword, by the Secretary-General to the United Nations Convention against Corruption, 2004.

[7] "The Lima Declaration against Corruption", adopted at the eighth International Anti-Corruption Conference, 11 September 1997.

[8] Excerpt from address by Mr. Keith Henderson to the thirteenth International Anti-Corruption Conference, Athens, 30 October to 2 November 2008.

32. Corruption has already been acknowledged by the Special Rapporteur as one of the most serious obstacles to the promotion and protection of human rights (A/HRC/14/26, para. 73). Judicial administration is indeed essential to the protection and implementation of human rights, as well as to upholding the rule of law. Corruption in administration weakens national institutions. It also dramatically reduces public trust in the institutions of States, in particular, the judiciary. A non-independent, partial or corruptible court system cannot effectively hold to account the executive and legislative arms of States as prescribed in democratic regimes.

33. Whether or not corruption is endemic to the justice system of a State, its existence at any stage of the judicial process presents a substantial impediment to an individual's right to a fair trial and severely undermines the public's confidence in the judiciary. Where corruption raises the cost for judicial services, which keeps on rising through competition, judicial services are difficult or even impossible for those who cannot afford to obtain them, thus litigation is driven by corruption instead of by the legal process.[9]

34. According to the Open Society Justice Initiative,[10] around the world millions of people are locked up in pretrial detention because of corruption. The pretrial stage of criminal justice systems, from the time of arrest to trial, is said to be particularly vulnerable to corrupt practices. As is often the case, such corruption affects most severely the poor and disenfranchised, which is of serious concern to the Special Rapporteur, who encourages more scrutiny of all actors involved in the pretrial phase of criminal processes, including prosecutors, lawyers and judges.

35. Judicial corruption therefore has a strong potential for victimizing those who do not have the means to play by the informal rules set by a corrupt system. It also forms part of a vicious circle: both corruption and pretrial detention flourish under the same circumstances, so a dysfunctional justice system leads to corruption and that corruption further adversely affects the justice system.[10]

36. Looking beyond acts of corruption, the fact that the public in some States perceive the judiciary as a corrupt authority is of particular concern. A lack of trust in the justice system is detrimental to democracy and development and encourages the perpetuation of corruption. Public perception of independence and impartiality is of particular importance to the credibility of the entire justice system.

37. Calls for accountability of judges and prosecutors frequently occur in situations where there exists a perception that the judiciary has been lenient in the imposition of sentences on offenders or in situations where it appears that a victim's interests have not been given due consideration during the judicial procedure.

38. Apart from generating distrust and even fear, corruption in the judiciary discourages people from resorting to the formal justice system, thereby diverting dispute settlements towards informal systems, which themselves often do not abide by the basic principles of impartiality, fairness, non-discrimination and due process.

---

[9] Technical paper delivered at the Economic Commission for Africa Ad Hoc Expert Group Meeting on Deepening the Judiciary's Effectiveness in Combating Corruption, held in Addis Ababa from 19 to 21 November 2007.

[10] Global Campaign for Pretrial Justice, Open Society Justice Initiative.

39. Finally, the Special Rapporteur is particularly concerned about the fact that judicial corruption is often most costly to victims seeking, or even simply trying to gain access to, redress for wrongs or human rights violations in the formal justice system.

C. Safeguards against judicial corruption

40. The fundamental nature of the principles of safeguarding the independence of the judiciary requires that any strategies pursued in the fight against corruption in the judiciary must take place within an established framework. The elements that have an impact on the corruptibility of judges, prosecutors and lawyers are hereafter analysed in the light of the international standards regarding the independence of the judiciary. Even if judicial corruption is influenced by many factors, in particular the State's specific legal, social, cultural, economic and political environment, common problems can be identified and should be addressed.

41. While analysis of such problems and related safeguards focuses on judges and prosecutors as institutional actors, measures to ensure the prevention and punishment of corrupt behaviour among members of the legal profession are also essential. The Special Rapporteur has tried to address the particular situation of the legal profession, but is aware that more research is required on the aspects and specificities of corruption among legal professionals (apart from the judiciary) in order to be able to provide solutions that are better tailored to the needs of those professionals.

Judicial independence

42. Strengthening the judiciary from within, as well as providing all the safeguards for its independence vis-à-vis other public officials and private actors, is essential in combating and preventing instances of judicial corruption. A judiciary that is not independent can easily be corrupted or co-opted by interests other than those of applying the law in a fair and impartial manner. In order to combat corruption, judicial independence needs to be firmly institutionalized. Further, in order to prevent corruption, both financial and functional independence are necessary, as is constitutional or legal independence.

Judges

43. The requirements for the independence of judges are enshrined in the Basic Principles on the Independence of the Judiciary. A report of the Special Rapporteur on the independence of judges and lawyers, Leonardo Despouy, focused on the parameters, both individual and institutional, necessary to effectively guarantee the independence of judges (see A/HRC/11/41).

44. In principle 8, it is emphasized that judges should always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary. This illustrates that the requirement of independence and impartiality does not exist for the benefit of the judges themselves, but rather for the court users, as part of their inalienable right to a fair trial.

45. The processes of appointing and selecting judges emerge as critical when the issue of judicial corruption is examined. Judicial appointments can easily be manipulated by the executive or legislative branches or by private sector interests in

the election of specific lawyers financing their campaigns, which can lead to the selection of non-independent judges or judges biased towards particular political or economic interests. It is stipulated in principle 10 that "[a]ny method of judicial selection shall safeguard against judicial appointments for improper motives".

46. The Special Rapporteur believes that an appointment body acting independently of both the executive and legislative branches of Government contributes greatly to avoiding the politicization of the appointment of judges and their potential improper allegiance to interests other than those of fair justice. When selection criteria used by such bodies are objective, clear, based on merit, transparent and well publicized, public understanding of the process and the basis for the appointment of judges increases, and the perception of unfair selection or appointments tainted with corruption is avoided.

Prosecutors

47. The Special Rapporteur has underlined that it is essential that in the discharge of their functions prosecutors should be able to play their roles independently, impartially, objectively and transparently (see A/65/274, para. 19, and A/HRC/20/19, para. 24). A lack of autonomy and functional independence will expose prosecutors to undue influence and corruption and thereby erode their credibility vis-à-vis other actors in the justice system, as well as undermining public confidence in the effectiveness of the system. The appointment and selection of prosecutors should be based on objective criteria and be done through a public competitive selection process. Ideally, the majority of members of recruitment bodies should be composed of those from within the profession in order to avoid possible political or other forms of external interference (see A/HRC/20/19, para. 62).

Lawyers

48. With regard to the legal profession, the Basic Principles on the Role of Lawyers require Governments to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or other improper interference. While lawyers are not expected to be impartial in the same way as judges, they must be as free from external pressures and interference as judges are. When guarantees (see A/64/181) are not in place to enable lawyers to discharge their duties in an independent manner, the door is open to all sorts of pressure and interference, whether from public or private actors who seek to have an impact on judicial proceedings.

49. In this light, it is important that the legal profession be organized by a self-regulating, independent professional association. Such an organization would provide an umbrella of protection for its members against undue interference in their legal work. States should support such professional organizations of lawyers, which very often take the form of bar associations, without exercising any influence. Bar associations should also play an essential role with regard to the regulation of the process of admitting candidates to the legal profession. It follows that the institutional independence of such professional associations is of great importance as well. Not only would they act as a safeguard for their members against undue pressures, threats or influence, but they would also monitor and report on their members' conduct.

Terms and conditions of service

50. The terms and conditions of service of both the judiciary and prosecution services should be safeguarded by law in order to ensure that there is no manipulation by the executive or the legislature to punish or reward conduct and rulings. Such terms and conditions of work also are directly correlated to the potential corruptibility of members of the judiciary and prosecutors. Indeed, the better the benefits offered by their profession, the less incentive judges and prosecutors would have to engage in corrupt activities that could jeopardize the very position and status they enjoy.

Tenure and promotion

51. Principle 12 of the Basic Principles on the Independence of the Judiciary requires guaranteed tenure for judges until they reach mandatory retirement age or until the expiry of their term of office where such provisions exist. Security of tenure for judges should be guaranteed and not be subject to renewal; otherwise, there is a high risk that judges would modify their conduct and judgements in order to keep their position. The Special Rapporteur would like to highlight as a good practice lifetime tenure for judges and prosecutors, as such an arrangement tends to shield them from corruption and strengthens their independence in general.

52. The Special Rapporteur is especially concerned about reports of the increased use of temporary judges, who, because of the uncertainty of their position, may be more likely to be corrupted or pressured and who are less likely to report inappropriate behaviour or corrupt acts if they witness them.

53. The promotion of judges should be based on objective factors, in particular ability, integrity and experience.[11] In addition, final decisions on promotions should be taken by an independent body in charge of the selection of judges; the majority of that body should be composed of judges (see A/HRC/11/41, para. 71). If not, the coherence and fairness of any decision taken in relation to a judicial career could be jeopardized, which would definitely facilitate manipulation and corruption and undermine the independence of the judiciary. The assignment of judges to particular court locations, and their transfer to others, should equally be determined by objective criteria.

54. While the tenure of prosecutors depends on how the prosecution service is structured in a given State, security of tenure is an important element that reinforces prosecutors' autonomy, impartiality and independence. There is concern about instances where transfer systems are used as a punishment or reward mechanism depending on the level of allegiance of an individual prosecutor. It is equally important that promotion processes in prosecution services be transparent in order to avoid undue influence, favouritism or nepotism (see A/HRC/20/19, paras. 67 and 68).

Working conditions and status

55. Remuneration is often perceived as an important factor influencing the corruptibility of the judiciary, including prosecutors. In the Convention against Corruption, it is recommended that States take measures to promote the adequate remuneration of public officials (article 7 (c)). Low salaries and salary arrears are

[11] Principle 13 of the Basic Principles on the Independence of the Judiciary.

critical factors contributing to corruption within judicial systems. Dissatisfaction regarding the level of remuneration has been expressed on different occasions. Salaries of judges and prosecutors must be commensurate with their position, experience, professional development and responsibilities, throughout the entirety of their tenure. Fair pensions are also important, as fear of the future can lead to judges and prosecutors modifying their conduct in order to gain reassurance for the future.

56. An adequate salary together with proper working conditions would contribute to recognition of the status and attractiveness of the professions of judge and prosecutor. It is important to note, however, that higher-than-average salaries do not constitute the only factor that would reduce corruption. The benefits constituted by adequate working conditions and status would help insulate a judge or prosecutor from outside pressure and influence and aid such professionals in the proper performance of their duties.

57. Prosecutors operate at the entry of the criminal justice system and corruption or misbehaviour on their part would adversely affect the rest of the justice system and proceedings. In the Guidelines on the Role of Prosecutors, it is expressly stipulated that prosecutors should enjoy reasonable conditions of service, including tenure, when appropriate, remuneration and pension, commensurate with the crucial role they play in the administration of justice (see A/HRC/20/19, para. 66).

58. The organization of courts and prosecution services, including workload, adequate staffing and remuneration, also contributes to the attractiveness of these professions and can have some effect on the corruptibility of members.

Institutional management and resources

59. When court procedures and judicial proceedings, whether in the criminal or other justice systems, are bureaucratic, complicated, unclear and inefficient, the door is open to all types of corruption. Such acts would have a great impact on the delivery of justice, deterring or even negating the ability of victims to access the justice system. Operational efficiency and transparency are essential in order to prevent corrupt behaviours by court personnel and other actors in the judicial system, including lawyers, prosecutors and judges.

60. Good governance within the judiciary is of critical importance. Courts at all levels, prosecutorial services and judicial and prosecutorial councils should be furnished with adequate budgets to meet their needs; they should also have the power to manage such resources autonomously, independent of any external interference. The Special Rapporteur is concerned that many Member States do not give priority to the judiciary in terms of the percentage of the gross domestic product allocated to such institutions, especially to the lower jurisdictions.

61. A lack of internal capacity to carry out such tasks, including both material and human resources, would have a negative effect on the delivery of justice and might provide opportunities for internal and external actors to seek to channel the system to their advantage. Strengthening the human and material resources of judiciaries and prosecution services would be a significant factor in delivering fair and timely justice.

62. The Special Rapporteur has observed that widespread case delays fuel corruption and create the perception of corruption. Such delays may be accountable for a wide range of deficits related to courts' infrastructure, management and

resources, which can hamper the smooth functioning of the judiciary. These include lack of staff, lack of or inadequate infrastructure, lengthiness or opacity of proceedings, disorganized filing systems or lack of electronic filing, lack of mechanisms to control delays and lack of documentation centres and libraries.

63. The use of information technology in filing cases and ensuring an adequate number of well-trained and well-paid staff would improve efficiency and minimize the opportunities for bribes to be paid.

64. The judiciary could also consider installing a system of court administrators whereby judges and prosecutors would be freed from the bureaucracy of administrative functions, which would enable them to focus more closely on their respective judicial functions. The concept of court administrators allows for the continuity of institutional management and greater administrative competence and independence, since such positions would be filled by qualified professionals. Such administrators could also play an important role in promoting dialogue[12] among judges, courts and prosecutors, lawyers, other branches of the State and society. As a consequence, their work could contribute to a more specialized court management system.

65. The Special Rapporteur has observed that a non-transparent and subjective case-assignment system is vulnerable to manipulation and corruption. The same applies to prosecutors. In some countries, the court president has sole discretion on assignment (including the possibility of retaining a case), which provides avenues for corruption and greater opportunities for external interference.[13] In order to avoid such a situation, there should be a clear, objective and preferably random electronic system, which is continuously reassessed (see A/HRC/11/41, para. 47, and A/HRC/20/19, para. 80). Information on the system of case assignments should be clearly available to the public in order to counter suspicions of malpractice and corruption in the assignment of cases and provide greater transparency.

Adequate professional education and training

66. The importance of educating and training the actors of the justice system is a recurrent theme addressed by the Special Rapporteur throughout her reports. In particular, she has endeavoured to underline the need for continuing legal education and training to enable judges, prosecutors and lawyers to apply international human rights standards, norms and principles in the consideration of domestic cases.

67. Inadequate education and training, including lack of training on corruption, anti-corruption measures, the nature of judicial independence, autonomy, responsibility and judicial integrity, can all contribute to the corruptibility of the judiciary. In the Convention against Corruption, it is recognized that the education of court personnel is a core factor for the effective implementation of anti-corruption policies (see General Assembly resolution 58/4, articles 7 (1) (b) and 7 (1) (d)). All actors in the justice system, especially judges, prosecutors and lawyers, must be properly educated and trained with regard to their respective code

[12] Marie B. Hagsgård, "Internal and external dialogue: a method for quality court management", *International Journal for Court Administration*, vol. 1, No. 2. Accessed on 6 August 2012 from www.iaca.ws/files/LWB-Marie_Hagsgard.pdf.

[13] USAID Office of Democracy and Governance, *Guidance for Promoting Judicial Independence and Impartiality* (Washington, D.C., 2002), p. 63.

of ethics and standards of conduct, national and international legislation on corruption, international standards relating to the proper discharge of their functions, and international human rights law, including that relating to fair trial.

68. Under the Convention against Corruption, States are obligated, to the extent possible, to initiate, develop and improve specific training programmes for preventing and combating corruption, which should deal, inter alia, with: (a) effective measures to prevent, detect, investigate, punish and control corruption; (b) the building of capacity in the development and planning of strategic anti-corruption policy; (c) the evaluation and strengthening of institutions; and (d) methods used in protecting victims and witnesses who cooperate (ibid., article 60). Programmes developed in cooperation with the legal profession, which can also help prevent any impingement on independence, are also likely to increase the effectiveness of the training.

69. The environment and the attitude of an institution towards corrupt behaviour may contribute to sustaining or deterring occurrences of corruption. Training can significantly change attitudes that would be lenient or even favourable to corrupt conduct and pave the way for strengthening integrity.

Integrity and accountability

70. Integrity and accountability are essential elements of judicial independence. There should be mechanisms that enable the judiciary to foster integrity and enhance accountability at both the institutional and individual levels.

71. Corruption in the judiciary is a serious matter that undermines the integrity of a State's entire judicial system. Corruption should be given careful consideration, be confronted bravely and never be tolerated or accepted. Whenever suspicion or evidence of acts of corruption arise, there should be effective mechanisms of accountability to deal fairly with it. Public confidence in the judicial system depends on the clear perception of the existence of such mechanisms, which would also encourage complaints and reports on malpractice.

72. There have been reports that the occurrence of corruption has been used as a means to threaten the independence of the judiciary. Judges and prosecutors have been dismissed without the requirements of due process and fair trial first being fulfilled.

73. Lawyers have also been victims of campaigns to discredit and defame them on the basis of groundless accusations of corruption. In addition, in States where the executive governs access to the bar, lawyers are often arbitrarily disbarred and unfounded corruption allegations are used to justify banning them from practising law.

Integrity

74. The Bangalore Principles, which were drafted and adopted by judges of different States and legal traditions, are aimed at providing a guide concerning universal judicial ethics. The Principles include values that should be at the core of standards of ethical conduct for the judiciary: independence; impartiality; integrity; propriety; equality; competence; and diligence. Integrity is formulated as a value

that is "essential to the proper discharge of the judicial office".[14] In this context, it should be noted that it is of equal importance that the conduct of the judiciary reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done. Therefore a judge must accept certain personal restrictions freely and willingly, including for example the restriction that he or she shall neither ask for nor accept any gift or favour in relation to anything done or omitted in connection with the performance of his or her judicial duty.[15]

75. The Convention against Corruption refers to the duty of States parties to take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary (see General Assembly resolution 58/4, article 11). Accordingly, these measures must be in accordance with, and without prejudice to, the independent functioning of the judiciary.

76. One such measure is the adoption of a code of conduct that provides judges, prosecutors and lawyers with guidance on the performance of their professional duties and sets out clear guidelines as to which behaviour is considered acceptable or unacceptable. At the same time, the code would furnish a clear indication of the guidelines on which possible disciplinary proceedings could be based. For the effective promotion of judicial integrity, codes of conduct must be disseminated within the judicial system and to users and the general public.

77. Provisions regarding codes of conduct for public officials are found in article 8 (2) of the Convention against Corruption, which encourages States parties to apply codes or standards of conduct for the correct, honourable and proper performance of public functions.

78. Such codes of conduct provide the public with an understanding of some minimum standards concerning what can be expected and therefore enable them to collaborate in the oversight of judicial performance and the upholding of the integrity of the justice system. Public awareness would therefore enhance confidence in the judiciary.

79. The Special Rapporteur believes that transparency in a public administration is not an option, but a statutory and obligatory requirement that is fundamental to a democracy. Transparency remains a challenge for the judiciary, which is considered to be the most closed and least accessible of the branches of State. Transparency is a fundamental principal for the promotion of integrity and should be present throughout the judicial system by improving: the quality of administration of justice; accessibility for rich and poor alike; clarity of administrative procedures and of decision-making processes; publication of the use of financial resources; and disclosing the assets and income of judges, prosecutors and court staff.

80. Another measure that helps to increase the integrity of the judiciary is the establishment of parameters for judicial discretion in the interpretation of the law in order to create a level of certainty concerning judicial decisions. Such parameters could be used as guidelines that would help identify possible acts of corrupt behaviour in unusual court decisions.

[14] Value 3 of the Bangalore Principles.

[15] Ibid., values 3.2, 4.2 and 4.14.

81. A provision of principle 26 of the Basic Principles on the Role of Lawyers is that codes of professional conduct for lawyers should be established by the legal profession or by legislation in accordance with national laws and recognized international standards and norms. In the specific case of the legal profession, guidelines with regard to the cost of private legal services could also be considered. Unscrupulous lawyers may extort additional fees from their clients or make them pay for services that should be free or included as part of their fees, or they may even appropriate money belonging to their clients. Uneducated persons are especially vulnerable to such practices. Conversely, those who do not have the means to pay for the high fees of lawyers may be tempted to try to bribe their way through the justice system as a less expensive way to settle their case.

82. The Special Rapporteur believes that, in order to encourage adherence to such codes, it is of the utmost importance that codes be developed with the full participation of the actors whose conduct they will regulate (judges, prosecutors and lawyers).

Accountability

83. The principle of accountability is intrinsically linked to the rule of law. It may be observed that where the rule of law is effectively respected there is a greater degree of accountability within public administration and vice versa.

84. In article 8 (6) of the Convention against Corruption, States parties are encouraged to take disciplinary or other measures against public officials who violate the codes or standards of conduct. More specifically, in article 11 (1) of the Convention, without prejudice to judicial independence, States parties are encouraged to take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary; such measures include rules on the conduct of members of the judiciary. Measures to the same effect are encouraged under article 11 (2) and applied within the prosecution service of the States parties, where that service does not form part of the judiciary.

85. Combating corruption within the judicial system is important in order to strengthen judicial credibility and independence. Thus, the establishment of internal and external mechanisms of accountability for judges, prosecutors and the court staff is imperative.

86. Any such mechanisms should be developed with the full participation and consent of the actors concerned. They should guarantee that the investigation and prosecution of any actor in the judicial system safeguards the person's right to a fair hearing. Furthermore, it is necessary to ensure that the investigative process does not undermine the credibility of judges, prosecutors or lawyers before a charge against the defendant has been definitively proved. In that light, investigations preferably should take place confidentially. Complaint mechanisms for the enforcement of codes of conduct must therefore be constructed carefully and provide all necessary safeguards against political, economic or malicious allegations or investigations.

87. The Special Rapporteur emphasizes the fact that the goal of increasing judicial credibility and trust could be achieved only if the complaint mechanisms work effectively and provide for real, objective investigation and punishment of acts of corruption.

88. With regard to specific complaints of misconduct or corruption of judges, an independent body should be established within the judiciary to hear the complaints. While it is preferable that such a body be composed entirely of judges, retired or sitting, it would be consistent with the principle of judicial independence if there could also be some representation of the legal profession or legal academics. Such representation should be in the minority, and no political representation should be permitted.

89. Paragraph 21 of the Guidelines on the Role of Prosecutors provides that:

> Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.

Similarly, even in such cases when the judges and lawyers involved in corruption activities are held to account, international standards for due process and fair trial must be strictly observed.

90. It is important that accusations of corruption be promptly and adequately investigated and addressed through pre-established mechanisms dealing with the enforcement of rules and standards of conduct for judicial actors. However, where corruption is deeply rooted at all levels of public institutions, the reporting of corruption often may not lead to investigation or other adequate responses, which consequently diminishes incentives to report corrupt behaviour. These are important elements that need to be addressed by incorporating measures to combat judicial corruption into wider policies to combat corruption in other institutions of the State and the private sector. The establishment of measures and systems to facilitate reporting by public officials of acts of corruption to appropriate authorities, as encouraged under article 8 (4) of the Convention against Corruption, would contribute to increased instances of such reporting. Importantly, such systems must be accompanied by measures of protection for "whistleblowers".

91. In the case of widespread or other serious accusations of corruption, judges, prosecutors and lawyers alike should face criminal liability. Accordingly, States should criminalize and penalize corruption (see General Assembly resolution 58/4, article 15), and any existing criminal immunity of corrupt judges and prosecutors should be lifted; they should not be "above the law", as total immunity would only nourish distrust among the public with regard to judges and prosecutors in the justice system.

IV. Combating corruption through the judicial system

92. Combating corruption is a daunting and complex task. Furthermore, the existence of corruption is very difficult to establish for the purpose of criminal prosecution. The Special Rapporteur is convinced that measures for fighting corruption will have a real impact only if corruption is considered as a serious crime and State institutions act accordingly.

93. Apart from the necessity of having a credible judiciary, some institutional elements in addition to criminal procedure measures could play a prominent role in effectively combating corruption by means of the justice system.

Institutional elements

94. First, anti-corruption bodies should be established to implement and strengthen transparency within the public sector, including in the judiciary.

95. Such bodies should work as administrative units and have the duty to purge public administration of any kind of corruption. They should therefore report and denounce acts of corruption and cooperate with criminal proceedings, when requested. For that purpose, such anti-corruption bodies should be technical and not political.

96. Securing and strengthening the institutional independence of judges, prosecutors and lawyers is central for protecting these actors from external or internal pressures and interference and enabling them to discharge their professional duties with integrity, propriety and impartiality. Judges, prosecutors and lawyers should be confident that they can properly carry out their lawful functions without any kind of fear, harassment or intimidation in their professional lives.

97. In many previous reports, the current and former Special Rapporteurs on the independence of judges and lawyers recommended the clear demarcation of the functions and competencies of the different branches of power. Judges, lawyers and prosecutors should not only be independent of the other branches, but should also be sufficiently independent of each other.

98. The Basic Principles on the Independence of the Judiciary require that the security of judges be adequately guaranteed by law. Nevertheless, the Special Rapporteur frequently hears reports of inadequate efforts by State authorities to respond to security threats against judges and to provide them with protection.

99. For this reason, the Special Rapportueur would like to underline the importance of the development and implementation of security measures for judicial actors as part of a national plan of security.

100. Prosecutors are also often directly exposed to security risks. It cannot be expected that prosecutors who fear for their own security or of that of their families will be fully independent and impartial in the performance of their duties. The Guidelines on the Role of Prosecutors contain important safeguards for the specific security of prosecutors.[16] It is the responsibility of States to ensure implementation of those safeguards. The International Association of Prosecutors in 1999 developed minimum standards regarding the security and protection of prosecutors and members of their families (see A/HRC/20/19, paras. 76 and 77).

101. In the principle 17 of the Basic Principles on the Role of Lawyers, reference is also made to a positive obligation of State authorities to take effective measures to ensure the security of members of the legal profession. By virtue of the varied nature of their functions in the justice system, members of the legal profession must benefit from a specific safeguard: "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions" (principle 18). It has been noted that this principle is one of those most routinely breached. "This occurs particularly where lawyers defend clients in politically sensitive cases or cases related to large-scale corruption, organized crime, terrorism and drug trafficking" (A/64/181, para. 64).

[16] See guidelines 4 and 5.

Criminal procedure measures

102. An important element in the investigation, prosecution and punishment of corruption is the cooperation and competence of the investigatory services. Judges, prosecutors and the police need to cooperate with each other appropriately and transparently. The role played by prosecution services is sometimes overlooked in such matters. Yet, in the criminal justice system judges are not able to place sanctions on corruption if the prosecutors do not present cases that are sufficiently well evidenced. In this context, the Special Rapporteur would like to refer to her last report to the Human Rights Council, in which she underlined the importance of strengthening prosecution services (A/HRC/20/19).

103. When judges, prosecutors or lawyers are not corruptible, in the absence of adequate safeguards they could still be pressured or coerced into becoming involved in corruption. This is especially true in cases involving corruption by "organized criminal groups, senior officials or other powerful and well-resourced interests".[17] For this reason, it is manifest that judges, lawyers and prosecutors must be offered a certain level of security and protection in combating against corruption in order to be able to perform their duties without jeopardizing their mental and physical integrity or that of their relatives.

104. Another element for improving the investigation of corruption is the creation of specialized units or courts. Such specialization could be achieved through capacity-building programmes for the police, prosecutors and judges. The provision of modern information technology resources and adequate working conditions would enable them to accelerate investigations and obtain the evidence necessary to prove corruption and obtain convictions, as well as facilitating cooperation among national and international institutions.

105. Another element that undermines the principle of equality of all before the courts and is a common cause for the delay of criminal procedures is the application of "special guarantees" for certain public agents. States where such guarantees still exist should consider abolishing them. It is not unusual in large-scale corruption cases involving public agents to have lengthy discussions about which court should preside and investigate public agents that have the right to such guarantees. Since a change of function can lead to repeated discussions, this is often used as a means for delaying due process.

106. The principle of equality before the law should prevail based on the fact that anyone who commits a crime should be investigated, prosecuted and punished regardless of any differences, and specifically for public officials who hold decision-making powers in relation to the use of public resources.

107. Special guarantees foster the perception of impunity for such public officials, which in turn encourages further corruption and ultimately leads to a more generalized sense of institutionalized impunity that dangerously undermines the credibility of the judicial system.

[17] Tool No. 6 of the United Nations Office on Drugs and Crime, *Anti-Corruption Tool Kit* (Centre for International Crime Prevention — 15, vol. 1, November 2002), p. 33.

V. Conclusions

108. Corruption undermines the rule of law, democracy, social and economic development and the protection of human rights. Member States may wish to consider classifying large-scale corruption as a serious crime and be actively engaged in concrete actions for preventing and combating corruption. The judicial system plays a very important role in this context. It is of paramount importance that a clear message be sent: corrupt behaviour is not acceptable and will lead to appropriate disciplinary measures or, where appropriate, criminal proceedings against those who have engaged in it.

109. Judicial corruption erodes the principles of independence, impartiality and integrity of the judiciary; infringes on the right to a fair trial; creates obstacles to the effective and efficient administration of justice; and undermines the credibility of the entire justice system.

110. Measures to prevent and combat corruption need to be tailored to the specific situation of each State; such measures should involve cross-institutional efforts and include the participation of all sectors of society. Measures to combat corruption would be effective only if they are tailored to the specific social, cultural, economic, political and legal environment and enforce international legal standards. It is nevertheless possible to make general recommendations on specific measures to combat judicial corruption and strengthen the role of the judiciary in fighting corruption since the manifestations of corruption have many commonalities. Such measures should be part of a broader anti-corruption strategy that applies to all sectors, public and private.

111. It is essential that a diagnostic analysis be conducted within a country to identify, through user surveys of government services, the main institutional areas where systemic corruption arises; these should be carried out for each institution of government. Detailed action plans should be developed in consultation with all stakeholders concerned, including civil society. Such plans should include the problems detected, the solutions proposed, implementation measures and expected results. The implementation of action plans should be independently monitored and overseen.

112. To ensure implementation of lasting anti-corruption reforms, short-term benefits should be channelled through permanent institutional mechanisms capable of sustaining reform. There is a need to implement and strengthen internal and external independent control mechanisms in order to maintain permanent scrutiny and vigilance of the independence of the judiciary in order to be effective in combating corruption within the justice system and within the State and in order to protect and promote human rights.

VI. Recommendations

113. **The following recommendations should be considered in conjunction with, and bearing in mind, previous recommendations of the Special Rapporteur with regard to the independence of the judiciary, prosecutors and the legal profession (A/HRC/11/41, A/HRC/20/19, and A/64/181):**

General recommendations

(a) **States and other stakeholders should place the independence of judges, prosecutors and lawyers at the centre of their policies aimed at preventing and combating corruption and strengthening the rule of law and human rights;**

(b) **States should acknowledge that, because of its attributes, the judicial system is in an ideal position to initiate and reinforce the fight against corruption, as well as achieve results, and therefore deserves particular attention in States' anti-corruption policies;**

(c) **All State authorities should monitor the performance of public functions, including those implementing anti-corruption measures;**

(d) **States should formulate their anti-corruption reforms bearing in mind the context of their specific legal, social, cultural, economic and political environments.**

Recommendations to address corruption in the judiciary

(e) **States should strengthen safeguards for the independence of the judicial system and safeguards against judicial corruption in order to ensure the accountability of judges and prosecutors;**

(f) **Judges, prosecutors and lawyers should discharge their functions with integrity and impartiality and preserve the dignity of their profession;**

(g) **States, judges, prosecutors, lawyers and other public and private actors should recognize that the requirement of independence and impartiality of the judicial and legal professions does not exist for the benefit of the members of the profession themselves, but rather for the users of the justice system, as part of their inalienable right to a fair trial;**

(h) **States should support professional organizations of lawyers, such as bar associations, without exercising any pressure or influence on them. Such organizations and associations should play the main role in regulating admission to the legal profession;**

(i) **Special attention should be paid, and concrete measures taken, to ensure efficient protection of judges, prosecutors, lawyers, witnesses, victims, whistleblowers and other stakeholders involved in processing and judging cases of corruption, especially large-scale corruption or corruption cases related to organized and white-collar crime. Development and implementation of a national plan of security for judges, prosecutors and lawyers should be considered;**

(j) The processes for appointing and selecting judges and prosecutors should be guided by objective criteria, based on merit, and clear and transparent procedures, and take place through a public competitive selection process, free from political or economic influences or other external interference;

(k) States should establish a judicial oversight body, the majority of members of which should be judges, independent from the executive and legislative branches to oversee the appointment, selection, promotion and transfer of judges;

(l) The appointment and selection of prosecutors should be based on objective criteria and be done through a public competitive selection process;

(m) The terms and conditions of service of both the judiciary and prosecution services, including job security, adequate remuneration, promotion, working conditions and status, should be safeguarded by law;

(n) Good governance and the rule of law within the judiciary should be promoted. Courts at all levels, prosecutorial services and judicial and prosecutorial councils should be furnished with adequate budgets to discharge their functions and be empowered to manage their own budgets autonomously and independently of any external interference;

(o) States should consider creating court administrators in order to make the administrative functions of courts more professional, enabling judges to focus more on their judicial functions;

(p) A clear and objective electronic system for case allocation, administered by judges and assessed regularly, should be established on the basis of automatic random distribution or an objective system based on specialization;

(q) Judges, prosecutors and lawyers should receive good-quality, appropriate and continual training on international human rights norms and standards, particularly in combating corruption in the public and private sectors;

(r) Codes of conduct and guidelines should be established for judges, prosecutors and lawyers and their enforcement should be independently monitored and accounted for;

(s) Judges, prosecutors and lawyers should be accountable in the discharge of their functions. All disciplinary and other proceedings should be transparent, to the extent possible, and carried out in full conformity with international standards related to the right to a fair and impartial trial and due process;

(t) Confidential complaint mechanisms should be put into place, with the participation of the actors in the justice system, and include protection for whistleblowers, as well as due process guarantees for those accused;

(u) Allegations of corruption and failure to improve accountability should never be used by the legislative or executive branches as a pretext and premise for endangering the independence of the judiciary;

(v) As the systematic use of long pretrial detention may open the door to corruption, pretrial detention should be used only when no reasonable alternative can address risks of flight or danger to the society.

Recommendations to combat corruption by the justice system

(w) States should consider creating and implementing specialized units or courts to enhance the investigation, processing and judging of corruption cases by providing them with well-trained professionals, modern information technology resources and adequate working conditions that could enable them to obtain the necessary evidence in corruption cases;

(x) States where such a system still exists should consider abolishing the prerogative of "special guarantees" for some officials;

(y) The international community should strengthen its assistance to States in combating corruption, which would help strengthen the rule of law and democracy and reinforce the role of judges, prosecutors and lawyers in the promotion and protection of human rights.

United Nations A/67/306

General Assembly

Distr.: General
14 August 2012

Original: English

Sixty-seventh session
Item 135 of the provisional agenda*
Human resources management

Activities of the Ethics Office

Report of the Secretary-General

Summary

The present report is submitted in accordance with General Assembly resolution 60/254 on the review of the efficiency of the administrative and financial functioning of the United Nations, in which the Assembly requested the Secretary-General to report annually on the activities of the Ethics Office and the implementation of ethics policies. The report also includes information on the activities of the United Nations Ethics Committee, as mandated by the Assembly in resolution 63/250 on human resources management.

The present report covers the period from 1 August 2011 to 31 July 2012.

* A/67/150.

12-46303 (E) 140912

Please recycle

Contents

		Page
I.	Introduction	3
II.	Background and general information	3
III.	Activities of the Ethics Office	6
	A. Advice and guidance	6
	B. Financial disclosure programme	8
	C. Protection of staff against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations	14
	D. Outreach, training and education	16
	E. Standard-setting and policy support	18
	F. Evaluating United Nations culture for ethics and integrity	19
IV.	United Nations Ethics Committee	19
V.	Conclusions and recommendations	21
Annex		
	2011 Financial disclosure programme compliance level	23

I. Introduction

1. The present report, the seventh since the establishment of the United Nations Ethics Office in January 2006, is submitted pursuant to General Assembly resolution 60/254, paragraph 16 (i), by which the Assembly requested annual reporting on the activities of the Ethics Office and the implementation of ethics policies.

2. The present report provides an overview and assessment of the work programme of the Ethics Office pursuant to its mandate to secure the highest standards of integrity of staff members and to foster a culture of ethics, transparency and accountability within the Organization. The report addresses advances by the Office in the provision of ethics services to United Nations Secretariat staff members and to the Organization subsequent to the 2010-2011 reporting period.

3. The report also provides information on the Organization's first ethics and reputational risk assessment for United Nations peacekeeping operations as conducted by the Ethics Office. The assessment, designed to identify significant ethical and reputational risks arising in peacekeeping operations, will enable the development and implementation of measures to mitigate the identified risks, thereby ensuring the effective use of peacekeeping resources and safeguarding the Organization's reputation.

4. The General Assembly, in its resolution 66/234, endorsed the conclusions and recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions (A/66/511), including that ethics briefings be mandatory for senior United Nations managers. In that regard, and given the importance of establishing an ethical "tone from the top" for the purpose of promoting an ethical culture throughout the Organization, the report also addresses efforts by the Director of the Ethics Office to strengthen engagement with senior leadership, including through the initiation of a consultative and cascading ethics dialogues process involving management and staff.

5. The report is also submitted in response to General Assembly resolution 63/250 on human resources management, in which the Assembly, having welcomed the establishment of the United Nations Ethics Committee, requested the Secretary-General to include in his report information on the activities of the Committee.

II. Background and general information

6. The Ethics Office was established by the Secretary-General in accordance with paragraph 161 (d) of General Assembly resolution 60/1, entitled "2005 World Summit Outcome", in which the Assembly requested the Secretary-General to submit details on an ethics office with an independent status. Having commenced operation on 3 January 2006, the main areas of responsibility of the Office are as follows:

(a) Providing confidential advice and guidance to staff on ethical issues, including administering an ethics helpline;

(b) Administering the financial disclosure programme of the Organization;

(c) Undertaking the responsibilities assigned to it under the United Nations policy for the protection of staff against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations;

(d) Developing standards, training and education on ethics issues, in coordination with the Office of Human Resources Management and other offices as appropriate, and conducting ethics outreach;

(e) Supporting ethics standard-setting and enhancing policy coherence.

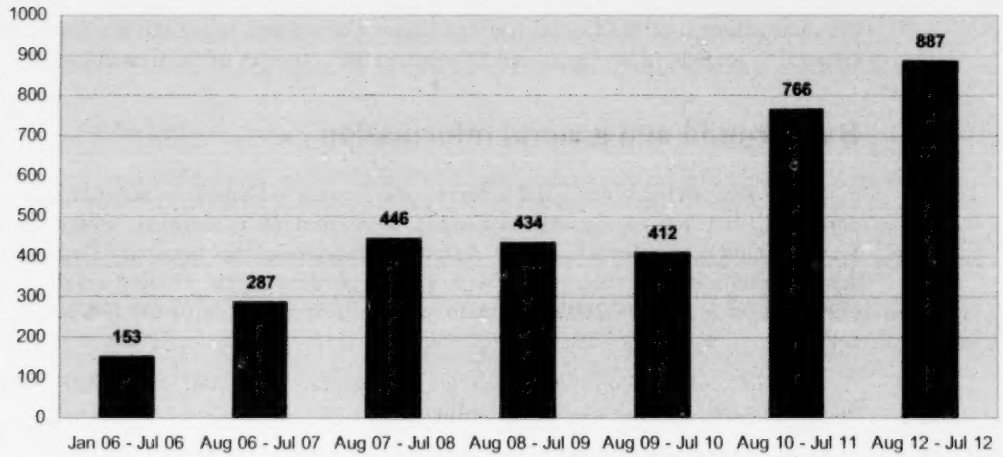
7. In pursuing its core mandates, the Ethics Office assists the Secretary-General in ensuring that all staff perform their functions in accordance with the highest standards of integrity and uphold the Charter of the United Nations. The Office works to promote and sustain an ethical organizational culture based on accountability, transparency and respect in order to enhance the effectiveness and credibility of the United Nations.

8. In respect of the Secretariat, including duty stations in New York, Geneva, Vienna and Nairobi, all regional commissions, peacekeeping operations, special political missions and other designated offices, the Ethics Office received a total of 887 requests for its services from 1 August 2011 to 31 July 2012. That figure represents an increase with respect to the 766 service requests received in the previous reporting period and attests to the continuing importance of the Office as a secure and confidential consultative resource for staff on matters related to ethics, values and organizational culture. Figure I below provides a comparison of the service request figures for the period 2006-2012.

9. The 887 requests received by the Ethics Office represent approximately 2 per cent of the total Secretariat staff population.

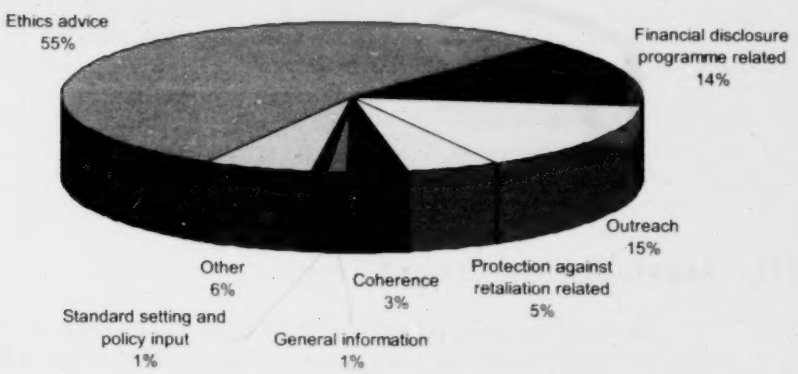
Figure I

Overall requests for Ethics Office services by reporting cycle, January 2006-July 2012



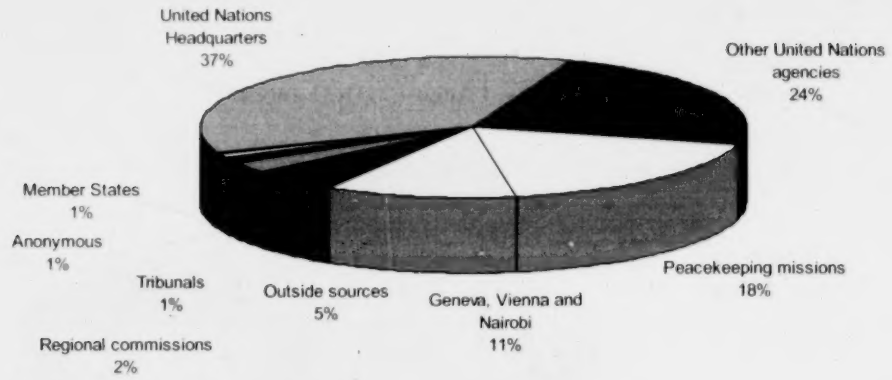
10. Reflecting the scope of the activities of the Ethics Office, requests for assistance covered a broad range of issues, including, inter alia, financial disclosure programme inquiries, permissibility of outside activities, acceptance of gifts, honours and awards, ethics training, ethics policy review and advice and protection against retaliation. A breakdown of service requests by category is provided in figure II below.

Figure II
Service requests by category, 1 August 2011-31 July 2012



11. As illustrated in figure III, the Ethics Office receives requests for its services from offices across all geographical locations. A 9 per cent increase in the percentage of requests coming from outside Headquarters was noted in the previous reporting cycle, which was attributed to the organizational outreach initiatives undertaken by the Office in 2010-2011. The percentage of requests from outside Headquarters increased from 57 per cent in 2010-2011 to 63 per cent in the present reporting period, demonstrating the continuing effectiveness of the ongoing efforts of the Office to engage with staff members outside of New York. As staff become more familiar with the services provided by the Office and develop trust in its efficacy, they are more likely to seek advice and guidance proactively to avoid risk, rather than retroactively and defensively.

Figure III
Service requests by source, 1 August 2011-31 July 2012



III. Activities of the Ethics Office

12. During the reporting period, the Ethics Office continued to actively build upon its achievements within each of its core mandate areas. In addition to consolidating and strengthening core ethics programmes, the Office expanded its work programme in relation to ethics training and engagement with senior United Nations leadership.

A. Advice and guidance

13. Through its provision of ethics advice and guidance, the Ethics Office plays an essential risk prevention function within the Organization. In providing advice on relevant standards of conduct and by clarifying staff obligations under applicable rules and regulations, the Office enables staff to make better decisions that advance the values, principles and interests of the United Nations. Confidential ethics advice serves to prevent, mitigate and resolve actual or perceived personal conflicts of interest that could undermine the reputation and credibility of the Organization.

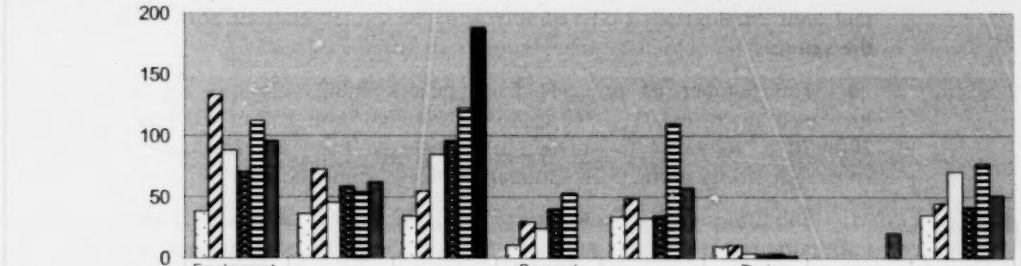
14. Pursuant to its mandate to provide confidential ethics advice and guidance to staff, management and United Nations departments/offices, the Ethics Office does not replace existing mechanisms available to staff for the reporting of misconduct or the resolution of grievances. In September 2011, in order to help staff understand the roles and mandates of the multiple entities within the Organization that address staff concerns, the Office distributed "The road map: a staff member's guide to finding the right place" to all field missions, executive offices, regional commissions and regional offices. The guide is also available on the new website of the Ethics Office (www.un.org/en/ethics/), which is discussed in paragraph 54 below. The guide is an essential staff resource for navigating the United Nations

system. It has been very well received by both United Nations staff and management, and an updated second edition will be published in 2012-2013.

15. With the support of the Office of Human Resources Management, the Ethics Office rewrote and expanded the 2005 version of the United Nations ethics guide. The revised guide, entitled "Working together: putting ethics to work", serves as a companion piece to the road map, and provides further guidance to staff on the fundamental ethical values and standards of the Organization as applicable to their daily work. The guide presents complex ethical concepts in an accessible manner and includes a user-friendly format, references to relevant rules and regulations, examples and frequently asked questions. While primarily available on the new website of the Office, limited print editions of the guide are available upon request.

16. During the reporting period, the Ethics Office received a total of 475 requests for ethics advice and guidance, representing 55 per cent of all service requests received (see figure II). Figure IV below provides the categories and breakdown of requests for ethics advice. Information pertaining to such categories is provided below in the section on the financial disclosure programme.

Figure IV
Requests for ethics advice by cycle, August 2011-July 2012



	Employment-related concerns	Gifts and hospitality	Outside activities	Personal investments and assets	Allegations of wrongdoing	Post employment restrictions	Procurement ethics	Other conflict of interest
Aug 2006 - July 2007	38	36	34	10	33	9	0	35
Aug 2007 - July 2008	133	72	55	30	48	10	0	44
Aug 2008 - July 2009	88	45	84	24	32	4	0	70
Aug 2009 - July 2010	70	58	95	40	34	3	0	42
Aug 2010 - July 2011	112	54	122	53	109	4	0	77
Aug 2011 - July 2012	95	62	188	0	57	2	20	51

Note: Advisory matters formerly classified as "personal investments and assets" are now categorized separately under the financial disclosure programme.

17. The largest number of requests for advice concerned "outside activities". Such requests experienced a 54 per cent increase, from 122 in 2010-2011 to 188 in 2011-2012, which indicates that staff increasingly understand the inherent risk of such engagements. The Ethics Office provides advice and guidance on the appropriateness of contemplated outside activities and on approval procedures.

18. As shown in figure IV, the Office has established a new advice category entitled "Procurement ethics", which reflects the increasing ethics advisory assistance requested by the Procurement Division. The Office provides independent

advice on issues related to the ethics, anti-corruption and corporate compliance programmes of vendors seeking to do business with the United Nations. In particular, the Office provides independent advice to the Procurement Division on (a) the suitability of external ethics and compliance experts who are proposed by vendors and who verify that the vendor has implemented ethics, anti-corruption and compliance programmes that satisfy United Nations expectations; and (b) whether the vendor's documentation concerning its corporate ethics and compliance programme provides sufficient reassurance to the United Nations about third-party reputational risks. Over the past 24 months, the Office responded to queries from the Procurement Division related to 17 vendors who were in the process of being reinstated. The Office was informed that nine vendors had been invited by the Procurement Division to initiate their re-registration applications. The Office also responded to requests for advice from the Procurement Division on potential organizational conflicts of interest and reputational risks and provided independent technical support concerning issues arising in connection with the implementation of the model policy framework on vendor eligibility.

19. The Ethics Office provided independent advice to the Department of Management and the Department of Field Support concerning the development of a compliance monitor for two vendors providing critical services to the Department of Field Support. The compliance monitor establishes a contractual oversight mechanism through which the vendors may continue to provide services, provided that their employees strictly comply with the United Nations policies applicable to the vendors.

20. The number of requests from peacekeeping missions for ethics advice increased again in 2011-2012 to 159, compared with 135 in 2010-2011 and 53 in 2009-2010. Requests for advice were received from all missions, reflecting the concerted efforts of the Office to reach peacekeeping staff.

21. The Ethics Office responded to enquiries from other United Nations entities on information-sharing, best practices, policies, and ethics advice and guidance. The entities included the World Intellectual Property Organization, the Food and Agriculture Organization of the United Nations (FAO), the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the United Nations Joint Staff Pension Fund, the World Bank, the International Civil Aviation Organization, the World Health Organization (WHO), the United Nations Environment Programme (UNEP), the United Nations Human Settlements Programme (UN-Habitat) and the secretariat of the United Nations Framework Convention on Climate Change.

B. Financial disclosure programme

22. The Ethics Office is mandated to administer the financial disclosure programme. The goal of the programme is to identify, manage and mitigate the risk of personal conflicts of interest in pursuit of strengthening public trust in the integrity of the Organization. In accordance with Secretary-General's bulletin ST/SGB/2006/6, designated staff members, including all staff at the D-1 level and above and those involved in procurement and investment, are obliged to file annual disclosure statements. The review of financial disclosure statements is outsourced to an external party.

23. A total of 4,306 staff members participated in the 2011 filing cycle, beginning 1 March 2011 and covering the financial disclosure reporting period of 1 January to 31 December 2010. Of that number, 1,094 were new or non-recurrent filers. A total of 99.9 per cent of the participants (or 4,303 staff members) complied with their filing obligations, representing the highest overall compliance level in the history of the programme.

24. In 2011, the Ethics Office continued to take measures to support compliance with programme requirements. The Office held briefings at the beginning of the cycle for filers and other interested staff members, including departmental focal points, who provide direct support and follow-up in respect of the programme at the departmental level. The Office gave briefings on the programme in ethics workshops, staff orientation courses and town hall meetings. The Office provided enhanced technical support to staff experiencing technical filing difficulties and responded to individual filer queries within a 48-hour window. Staff members who failed to adhere to their disclosure obligations after having received Ethics Office support were referred on a monthly basis to their departmental focal points and department heads for internal follow-up. Enhanced efforts were undertaken by the external reviewer of the programme to follow up with concerned staff, before non-compliance cases were referred back to the Office. The 99.9 per cent compliance rate of the programme is directly attributable to such efforts. The Office continued to reach out to all participating departments/offices and filers in an effort to ensure full compliance with the programme.

25. For the 2011 filing cycle, a total of 214 participants were selected for the verification process on the basis of a stratified random sample across different grades, departments/offices and duty stations. In addition to the participants selected at random, participants from the 2010 filing cycle who had not provided complete third-party documentation were reselected for the 2011 verification process. For the first time in the history of the financial disclosure programme, all of the participants selected for the 2011 verification process submitted complete third-party documentation, as had been requested.

26. During the 2011 filing cycle, the external reviewers of the programme identified 80 filers (1.9 per cent of the filing population) as having a total of 103 items that had given rise to potential or actual conflicts of interest requiring resolution, compared with 102 filers (2.5 per cent of the filing population) with a total of 150 items in 2010. Of the 103 conflicts identified in 2011, 14 related to financial holdings, 65 to outside activities and 24 to family relationships. The reviewers, in consultation with the Ethics Office, issued recommendations regarding actions to be taken in order to remedy the conflicts. Table 1 below provides a comparative breakdown of the remedial actions taken for identified cases for both 2010 and 2011. Where an item no longer presented a potential conflict of interest, no further action was required.

Table 1
Remediation of conflict of interest cases in the 2010 and 2011 filing cycles

	Number of conflicts		*No further action*		*Obtain approval*		*Recusal*		*Managed account*		*Other*	
	2010	*2011*	*2010*	*2011*	*2010*	*2011*	*2010*	*2011*	*2010*	*2011*	*2010*	*2011*
Financial interests	58	14	12	3		1	34	10	8		4	
Outside activities	50	65	16	10	29	47		1			5	7
Family relationships	42	24	6	3			32	20			4	1
Total	**150**	**103**	**34**	**16**	**29**	**48**	**66**	**31**	**8**	**0**	**13**	**8**

27. In addition to providing guidance on mitigating and managing personal conflicts of interest identified through the financial disclosure programme during its regular filing cycle, the Ethics Office continued to respond to requests for advice on a range of issues related to the programme, including personal investments, outside activities and family relationships. During the period from 1 August 2011 to 31 July 2012, the Office responded to 56 requests related to financial disclosure matters.

28. By the close of the 2011 filing cycle, only three participants had failed to comply with their obligations under the programme, compared with 34 in the 2010 filing cycle. Of those three, two were staff members from participating United Nations entities other than the Secretariat. The remaining staff member from the Secretariat was referred to the Office of Human Resources Management for appropriate action. The significant increase in compliance with the programme for the 2011 filing cycle attests to the enhanced efforts of the Ethics Office, in collaboration with concerned offices, in ensuring programme obligations are understood and adhered to by participating staff members.

29. In its resolution 63/250, the General Assembly endorsed a recommendation by the Advisory Committee on Administrative and Budgetary Questions that in future reports on the activities of the Ethics Office the Secretary-General provide data, by duty station, on the number of individuals covered by the programme, the number of individuals who have complied with their filing obligations, the number of individuals who have failed to comply with those obligations, and the reasons for their failure to comply. Information concerning the 2011 financial disclosure programme by department/office within the United Nations Secretariat is contained in the annex to the present report.

30. The United Nations voluntary public disclosure initiative continued during the 2011 filing cycle with additional advancements. While 111, or 81 per cent, of senior United Nations officials at the level of Assistant Secretary-General and above had participated in the initiative in 2010, a total of 129 senior officials participated during the 2011 cycle, representing a 93.5 per cent participation rate. Of those participants, 87 officials (or 67 per cent) opted to publicly disclose a summary of their assets, liabilities and outside interests, demonstrating their commitment to transparency and their recognition of the need to assure the general public and Member States that in the discharge of their official duties they were not influenced by personal considerations. The remaining 42 officials (or 33 per cent) publicly affirmed that they had duly completed their confidential financial disclosure statements as required by the Organization. The voluntary public disclosures of senior officials are posted on the website of the Secretary-General.

31. Concerning the 2012 filing cycle, a total of 4,594 staff members were enrolled as at 31 July 2012. Figure V and table 2 below provide a comparison of the participation levels between the various annual filing cycles of the financial disclosure programme, including a breakdown by organizational grouping.

Figure V
Financial disclosure participation by entity and filing year, 2008-2012

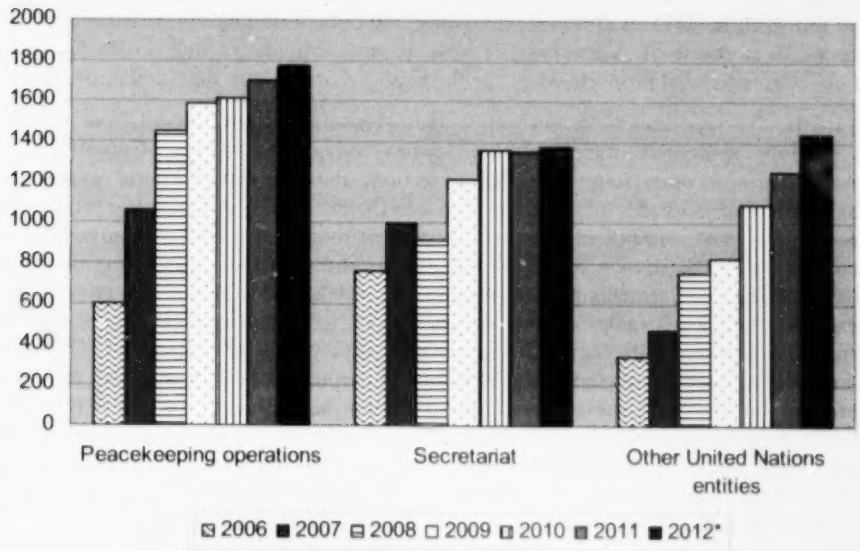


Table 2
Financial disclosure participation by entity and filing year, from 2006 to 2012

	Peacekeeping operations	*Secretariat*	*Other United Nations entities*	***Total by year***
2006	603	762	339	**1 704**
2007	1 062	997	469	**2 528**
2008	1 449	919	750	**3 118**
2009	1 584	1 212	822	**3 618**
2010	1 700	1 253	1 112	**4 065**
2011	1 697	1 351	1 258	**4 306**
2012*	1 771	1 380	1 443	**4 594**

* As of 31 July 2012.

32. While the financial disclosure programme is targeted primarily at the Secretariat, other United Nations entities[1] also participate on a cost-sharing basis. This enables a coherent approach in implementing financial disclosure policies and assists the entities in managing personal conflict of interest risks.

33. Since the commencement of the programme, the filer population has increased significantly, from 1,704 in 2006 to 4,594 as at 31 July 2012, representing an increase of 170 per cent (see table 2 above). The external costs of administering the programme, such as the programme's information technology platform, administration services and system hosting, have increased by approximately 32 per cent. As a result of economies of volume and efficiency, such costs have not, however, increased proportionately with the sharp increase in the number of filers.

34. In its resolution 66/234 on human resources management, the General Assembly endorsed the recommendations of the Advisory Committee on Administrative and Budgetary Questions that the Secretary-General explore all available means of obtaining review services for the financial disclosure programme at a lower cost without compromising confidentiality, consider the possibility of consolidating the review function with the information technology services when defining the requirements for the programme during the forthcoming procurement exercise, and keep under review the matter of filing periodicity. Given that the current contract with the external review vendor for the financial disclosure programme expires in January 2013, the Secretariat has initiated the rebidding process for the procurement of external review services and certain information technology services, in accordance with standard procurement procedures. Efforts are being made by the Secretariat to explore ways to contain the costs of the programme. Concerning the information technology platform that supports the programme, the Secretariat is in the process of identifying funds for the development of a new platform. Pending the integration of the new platform into the programme once funds have been secured, the current platform will continue to be maintained and enhanced through regular upgrades to ensure its viability. The Ethics Office continues to consider the matter of filing periodicity, bearing in mind the risk profile of the Organization.

35. In its resolution 66/234, the General Assembly endorsed a recommendation by the Advisory Committee on Administrative and Budgetary Questions calling for a review of the regulatory framework of the financial disclosure programme so as to accord the Ethics Office a greater role in determining the filing population and to formulate a more focused set of eligibility criteria. The Office is in the process of consulting with other concerned offices, including the Office of Legal Affairs, the Office of Human Resources Management and the Office of the Controller, to identify areas where further guidelines, clarification and/or revision to the current policy governing the financial disclosure programme should be considered in order

[1] The following United Nations entities currently participate in the programme: the United Nations Relief and Works Agency for Palestine Refugees in the Near East, the United Nations Institute for Disarmament Research, the United Nations Interregional Crime and Justice Research Institute, the Joint United Nations Programme on HIV/AIDS, the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, the Office of the United Nations High Commissioner for Refugees, the United Nations Compensation Commission, the United Nations Framework Convention on Climate Change, the United Nations Institute for Training and Research, the United Nations University and UN-Women.

to define eligibility criteria more clearly and to better determine the filing population based on the risk profile of the Organization.

36. The Secretariat has undertaken a number of measures to address and mitigate personal conflicts of interest, as requested by the General Assembly in its resolution 66/234. Such measures include providing information and guidance on managing conflicts of interest to staff during new staff orientation and regular mandatory ethics workshops, as well as other training and briefing sessions. The Ethics Office has developed a new website and ethics guide, which provides practical guidance to staff on a broad range of ethics-related issues, including how to prevent, identify and mitigate conflicts of interest in the performance of official duties.

37. The financial disclosure programme has enhanced the awareness of participating staff of the need to protect themselves and the United Nations against reputational risk and personal conflicts of interest. Over the past six years, the programme has reviewed over 19,000 individual financial disclosure statements. The programme has grown from an original 1,704 participants in 2006 to over 4,500 in 2012. Because participants are added to the programme upon joining the United Nations or upon promotion or change in functions, the programme is effective in identifying and managing potential conflicts of interest early on and prior to actual conflicts emerging.

38. Since 2006, over 109,000 e-mail and telephone communications have been held between staff members and the external reviewer regarding the review of staff financial disclosure statements. The enhanced awareness of conflicts of interest is further evidenced by the development of a securities pre-clearance programme by the United Nations Joint Staff Pension Fund, and by the decrease in the number of conflict cases dealing with financial assets. While 58 such cases were reported in the 2010 programme, only 14 cases arose in 2011, as shown in table 1 above.

39. The financial disclosure programme has raised greater awareness among participating staff members of relevant organizational rules and polices. For example, in the course of notifying staff members of the requirement since 2008 to seek approval for outside activities, the programme has recommended that staff obtain approval for 170 previously unapproved outside activities. Recommendations and correspondence have served to educate participants about conflicts of interest. Staff members who become aware of the nature and risks surrounding their conflicts of interest are less likely to enter into similar situations in the future.

40. The programme has brought to light risk situations that may otherwise have gone unnoticed and caused harm to the reputation of the Organization. In particular, the programme detected a broad conflict of interest situation that led to a procedural review aimed at preventing such situations from recurring. The programme has contributed significantly to raising staff awareness and ensuring adherence to integrity standards, particularly those concerning outside activities and family relationships.

41. In response to the request by the General Assembly in its resolution 66/234 that the Secretary-General propose measures to address personal conflicts of interest, such as those concerning the extension of the financial disclosure programme to other staff categories and post-employment restrictions, the Ethics Office is in the process of consulting relevant offices. The current policy on post-

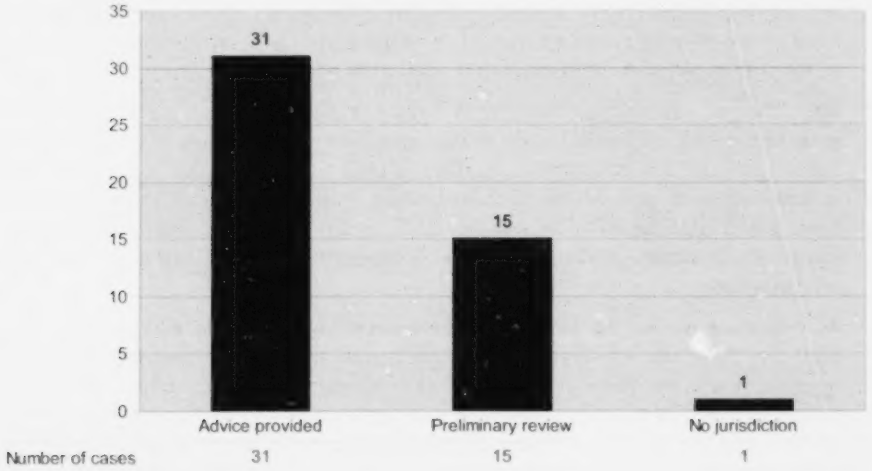
employment restrictions primarily covers staff involved in the procurement process, including requisitioners, as defined in the United Nations Procurement Manual.

C. Protection of staff against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations

42. Pursuant to Secretary-General's bulletin ST/SGB/2005/21, staff members who believe they have been subject to retaliatory action as a consequence of either having reported misconduct or for having cooperated with a duly authorized audit or investigation may file a request for protection against retaliation with the Ethics Office. The Office conducts preliminary reviews of protection requests to determine if the complainant engaged in a protected activity and, if so, whether the protected activity was a contributing factor to the alleged retaliation. If the Ethics Office determines that a prima facie case of retaliation has been established, the case is referred to the Office of Internal Oversight Services, or an alternate investigating mechanism if required, for formal investigation. The Ethics Office will make a final retaliation determination subsequent to receipt and assessment of the completed investigation report and evidential materials.

43. From 1 August 2010 to 31 July 2011, the Ethics Office received 46 inquiries related to protection against retaliation. Concerning those inquiries where staff members specifically requested protection against retaliation in accordance with Secretary-General's bulletin ST/SGB/2005/21, the Office initiated 15 preliminary review assessments, as shown in figure VI below. For the 15 preliminary review assessments, the Office completed its review of 14 cases, with 2 of the cases referred for investigation subsequent to prima facie findings of retaliation by the Office. While it was determined that there was no prima facie case of retaliation for 12 of the cases, the preliminary review process remains under way with regard to the remaining case.

Figure VI
Actions taken on requests for protection, 1 August 2011-31 July 2012



44. Regarding the 30 inquiries that did not involve preliminary review assessments, 1 was determined to have fallen outside the scope of the mandate and the remaining 29 involved the provision of advice on the policy of the Organization on protection against retaliation. Staff members who raised grievance issues not covered by the policy were directed to other relevant bodies including, inter alia, the Office of the United Nations Ombudsman and Mediation Services, the Office of Staff Legal Assistance, the Management Evaluation Unit and the Office of Human Resources Management.

45. Concerning one of the two prima facie case findings referenced in paragraph 43 above, the Ethics Office additionally facilitated interim protection measures, including the suspension of a performance evaluation and the reassignment of reporting officers.

46. Regarding the implementation of final corrective remedies, the current reporting period saw the implementation of a 2011 Ethics Office recommendation to the Executive Office of the Secretary-General that an individual who had been determined to have suffered retaliation be transferred to another Secretariat office. The implementation of that recommendation was achieved through the collaboration of the Executive Office of the Secretary-General and the Department of Management.

47. From August 2006 to July 2012, the Ethics Office initiated 106 retaliation complaint preliminary reviews. Of those 106 cases, 1 remains under review and 18 were closed as a result either of the complainant having withdrawn or abandoned his or her complaint or of the case having been resolved informally to the satisfaction of the complainant. For the remaining 87 complaints for which preliminary reviews were completed, the Office determined 9 prima facie cases of retaliation and referred those cases for formal investigation, pursuant to Secretary-General's bulletin ST/SGB/2005/21. Investigations were completed for five of the cases, after which the Office determined that retaliation had been established for one of them.

48. The enactment of the whistleblower policy of the Organization was an essential element of the internal reforms mandated by the 2005 World Summit and was intended to encourage staff members to report fraud, corruption, waste of resources and other serious forms of misconduct. The promotion of such reporting furthers the capacity for institutional redress and ultimately serves to protect the integrity and credibility of the Organization.

49. Despite that intent, the overwhelming majority of reports of misconduct cited in retaliation complaints submitted to the Ethics Office have not involved serious misconduct that could be harmful to the Organization, but rather allegations of inappropriate conduct directed at the complainant from within his or her management chain. The current policy is being overwhelmingly utilized as a staff grievance mechanism pertaining to work performance matters, rather than fulfilling its purpose of facilitating reports of serious misconduct concerning behaviour that may cause severe consequences for the Organization if left unidentified and unaddressed.

50. In the course of administering Secretary-General's bulletin ST/SGB/2005/21, the Ethics Office has identified shortcomings with the bulletin and the need for greater clarification of the roles and responsibilities of various offices in order to facilitate the effective implementation of existing whistleblower protection within

the Organization. In order to remedy the shortcomings, and in pursuit of making the policy of the Organization on protection against retaliation more robust and effective, a comprehensive, structured review of the existing policy is being considered with a view to enhancing how the Organization encourages the reporting of serious misconduct, protects whistleblowers from retaliation and intervenes to prevent retaliation from occurring. The modalities of such a review are currently under discussion.

D. Outreach, training and education

51. During the 2010-2011 reporting cycle, the Ethics Office undertook significant efforts to expand outreach activities to staff based in duty stations outside of New York. Direct engagement with field-based staff remains essential in order to broaden the awareness of Office services, manage the intake of ethics-related staff concerns and strengthen and consolidate an ethical culture across the Organization.

52. During the reporting period, the Ethics Office continued its efforts to enhance interaction with field staff on ethics issues. The Director of the Ethics Office, with the support of Office personnel, conducted field visits to the United Nations Office at Vienna, the United Nations Office on Drugs and Crime, the United Nations Office at Nairobi, UNEP, UN-Habitat, the United Nations Support Office for the African Union Mission in Somalia, the Regional Service Centre at Entebbe, Uganda, the United Nations Office in Rwanda, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), the United Nations Office at Geneva, the United Nations Conference on Trade and Development, the secretariat of the United Nations Framework Convention on Climate Change in Bonn, Germany, the United Nations Stabilization Mission in Haiti, FAO, the International Fund for Agricultural Development and the World Food Programme.

53. In the course of its outreach missions, the Ethics Office conducted individual consultations with staff and management, town hall meetings with field staff, targeted ethics presentations and focus group meetings, in order to address ethics issues pertaining to United Nations ethics standards, conduct, discipline, procurement and training. In total, face-to-face meetings were conducted with approximately 800 staff members.

54. In May 2012, the Ethics Office officially launched its new public website, which provides staff members and the public with a central resource for information relating to the mandate of the Office and a comprehensive overview of its individual services. Since it was brought online, the site has been visited more than 10,000 times, with information on ethics advice and training particularly accessed.

55. To further enhance the awareness of staff members of the Ethics Office, in 2011-2012 the Office produced a series of posters publicizing its services and contact information. It also developed information posters on protection against retaliation for distribution in Secretariat offices to raise awareness of the policy of the Organization in that regard and to encourage staff to speak out against behaviour that places the integrity of the United Nations at risk.

56. The Ethics Office intends to use its guides entitled "The road map: a staff member's guide to finding the right place" and "Working together: putting ethics to work" as ethics awareness-building and training tools.

57. Given the importance of training to expand ethical awareness and empower staff to exercise ethical judgement, the Ethics Office serves as the Secretariat expert on the design and development of ethics training. In accordance with its mandate to develop standards, training and education on ethics issues and ensure annual ethics training for all staff (see ST/SGB/2005/22), the Office in collaboration with the Office of Human Resources Management, organized in-person and online learning activities for Secretariat-wide staff.

58. Delivery of the workshop on the theme "Professional ethics and integrity in our daily work" continued at New York and at other duty stations throughout 2011-2012. Since its launch in 2006, more than 14,000 staff members system-wide have participated in the workshops. During the reporting period, approximately 600 staff members system-wide were accommodated at 30 workshop sessions. With the addition of internal expertise on ethics training, education and outreach, the Ethics Office will continue to update and design new training programmes to address emerging ethical challenges.

59. For the first time, the Ethics Office, in collaboration with the Office of Human Resources Management, certified three field-based staff members to facilitate the workshop. The trainers, located at the Regional Service Centre at Entebbe, Uganda, MONUSCO and the United Nations Mission in South Sudan, began offering workshops at their duty stations in July 2012.

60. Online ethics training was provided through the mandatory online learning programme entitled "Integrity awareness initiative" (see ST/SGB/2005/17), which is directed at staff members at all levels and focuses on core values and standards of integrity to be observed within the workplace environment of the Organization. Since its launch in 2005, more than 50,000 people have completed the training, including 5,300 people during the current reporting period. In collaboration with the Office of Human Resources Management, the Ethics Office intends to update the programme during the next reporting cycle.

61. The online training module of the Procurement Division entitled "Ethics and integrity in procurement", accessible via its training campus website, continued into its third year. More than 300 people completed the programme during the reporting period. The programme is mandatory for Procurement Division staff members and recommended for other staff categories with procurement-related functions and responsibilities.

62. In October 2011 the Director of the Ethics Office delivered the ethical leadership component for the Senior Leadership Induction Programme, held in New York for senior civilian, military and police leaders in peacekeeping missions. The Director of the Office also provided ethics training at the United Nations System Staff College in Turin, Italy, and during the Senior Mission Administration and Resource Training Programme held at the United Nations Logistics Base in Brindisi, Italy, in June and July 2012. The customized sessions similarly emphasized the importance of ethical leadership.

63. Pursuant to resolution 66/234, and recognizing that the behaviour of senior United Nations managers has a direct and lasting impact on the culture of ethics, integrity and accountability of the Organization, the Director of the Ethics Office conducted 26 confidential ethics induction briefings with incoming and newly appointed Assistant Secretaries-General and Under-Secretaries-General, including

Special Representatives of the Secretary-General and Deputy Special Representatives of the Secretary-General. Noting the large number of new appointments per annum at the D-1 and D-2 levels across all duty stations, the Office is examining ways to effectively extend such briefings to all incoming senior managers at those levels.

64. Ethics outreach is instrumental in promoting an ethical organizational culture. By focusing on an ethical "tone from the top", the Organization helps to sustain that culture. The 2011 senior manager compact cycle of the Secretary-General included the objective of supporting the commitment of the Organization to an ethical culture. Upon the request of the Under-Secretary-General for Management, the Director of the Ethics Office conducted confidential ethical leadership behaviour assessments of all Under-Secretaries-General who had signed senior manager compacts. Participating Under-Secretaries-General received confidential feedback on the results of the process. The initiative has enabled members of the senior leadership team to consider how specific ethical leadership behaviours have affected their abilities to lead and motivate their teams.

65. The Ethics Office was also requested by the Secretary-General during the reporting period to create an enhanced ethical organizational culture by initiating the leadership dialogues project, under which the Office, with support from the Executive Office of the Secretary-General, the Office of Human Resources Management and Department of Management, is developing a discussion guide on what it means to be an international civil servant and the importance of the oath of office. Through a traditional management cascade process, starting with a guided discussion led by the Secretary-General with his senior leadership team, each successive layer of management will lead their immediate staff in a conversation on the oath of office. It is expected that the dialogue process will commence in late 2012 and be completed by 30 June 2013.

E. Standard-setting and policy support

66. Advocacy for ethics standard-setting and the provision of policy advice remain key functions of the Ethics Office. The commitment by the Organization to uphold ethical values and standards and fully integrate them into organizational policies, regulations, guidelines and operating procedures contributes to ensuring that such standards are observed in the performance of official duties.

67. During the reporting period, the Ethics Office provided support and advice on ethics standard-setting and policy questions to various departments/offices within the Secretariat and to funds and programmes. Substantive policy advice was provided on a range of ethics-related issues, including the terms and conditions for the recruitment of certain types of personnel, personal and organizational conflicts of interest and the inclusion of ethics considerations in the conduct of organizational surveys.

68. The Ethics Office, in collaboration with the United Nations Ethics Committee, issued staff guidance notes on the receipt of gifts and involvement in outside activities. The notes provide practical and user-friendly guidance to staff members on their relevant obligations as international civil servants.

69. The Ethics Office also held frequent consultations with relevant departments/offices, including the Office of Human Resources Management, the Department of Management and the Office of Legal Affairs, on issues including the review of the financial disclosure policy, measures to enhance accountability and transparency and conflict of interest management. The Ethics Office further provided substantive input to the Office of Human Resources Management concerning the review of the standards of conduct for the international civil service.

70. In collaboration with the World Bank, the Ethics Office reviewed and analysed the results of a benchmarking survey on the ethics function in international organizations. The results of the research will be shared with the anti-corruption working group of the Group of Twenty.

F. Evaluating United Nations culture for ethics and integrity

71. In its resolution 66/234, the General Assembly endorsed the conclusions and recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions (A/66/511), including that the Secretary-General devise appropriate ethics evaluation criteria. In that report, the Committee commended the outreach efforts undertaken by the Ethics Office throughout 2010-2011 and noted the significant increase in the volume of service requests handled by the Office. The Advisory Committee stated, however, that the reported increase in volume of service requests received and the number of cases reviewed were not sufficient indicators to determine fully whether the objectives of promoting high standards of integrity and a culture of ethics were being achieved.

72. In that regard, and subsequent to a request from the Department of Field Support, from January to June 2012 the Ethics Office conducted the Organization's first ethics and reputational risk assessment of field operations. The risk assessment, which was carried out in a representative sample of peacekeeping operations, employed a scalable quantitative and qualitative methodology that was specifically designed to identify significant ethical and reputational risks that threaten the ability of the United Nations to fulfil its peace and security mandates. The assessment sought to establish a credible statistical baseline for monitoring the perceptions and attitudes of staff at all grade levels in field operations concerning the ethical culture at the United Nations and organizational and personal integrity. The results of the risk assessment will enable the Organization to take appropriate, prudent actions to address and mitigate the identified structural, procedural and behavioural risks, and thereby protect and enhance its reputation, use its resources more effectively and minimize the risk to successful mandate delivery.

IV. United Nations Ethics Committee

73. The United Nations Ethics Committee was established by Secretary-General's bulletin ST/SGB/2007/11, entitled "United Nations system-wide application of ethics: separately administered organs and programmes", which came into force on 1 December 2007. The primary responsibilities of the Committee are to establish a unified set of ethical standards and policies of the United Nations Secretariat and of the separately administered organs and programmes, and to consult on certain

important and particularly complex cases and issues having United Nations system-wide implications.

74. The United Nations Ethics Committee is composed of the heads of the Ethics Offices of the separately administered organs and programmes of the United Nations, and the Ethics Office of the United Nations Secretariat. As at 31 July 2012, the Committee's membership includes the United Nations Secretariat, the United Nations Development Programme, the United Nations Children's Fund, the United Nations Population Fund, the United Nations Office for Project Services, WFP, the United Nations Relief and Works Agency for Palestine Refugees in the Near East and the Office of the United Nations High Commissioner for Refugees. The Ethics Office also provides ethics services to the staff of UN-Women at its request, in accordance with section 2.2 of Secretary-General's bulletin ST/SGB/2007/11, pending the designation of an Ethics Officer by that entity.

75. Pursuant to section 2.3 of Secretary-General's bulletin ST/SGB/2007/11, the Director of the Ethics Office chairs and provides functional leadership to the Committee in order to promote capacity-building and to ensure adherence to consistent methodology in the delivery of ethics-related services.

76. During the period from 1 August 2011 to 31 July 2012, the Committee met in 10 formal sessions. The priority of the Committee remains to enhance consistency in the application of ethics standards.

77. During the reporting period, the Committee continued to harmonize policies concerning financial disclosure, including the review methodology, filing eligibility criteria and provision of advice in managing conflicts. The Committee examined alternative risk-based approaches to financial disclosure adopted by different organizations, as well as Committee member programme experience, in order to improve programme effectiveness in detecting and mitigating conflicts of interest.

78. The Committee worked on common standard operating procedures and examined ways to enhance consistency in providing confidential advice. Committee members developed guidance notes applicable to United Nations personnel on outside activities, gifts and hospitality. The Committee shared experience in providing training and outreach, particularly in relation to induction briefings for senior management on ethical culture and leadership and in developing a common e-learning platform.

79. The Committee considered emerging ethical challenges posing individual, institutional and process risks. Some Committee members are also participants in the efforts of their organizations to develop anti-corruption initiatives and policies.

80. In November 2011, the Committee organized a workshop in New York on protection against retaliation for reporting misconduct or cooperating with authorized audits or investigations. The workshop focused on promoting coherence among Committee members of the policy and practice of the Organization on protection against retaliation, increasing consistency in decision-making across member offices by promoting harmonized operating procedures and providing advisory assistance to Committee members on the specific issues and challenges of protection against retaliation.

81. As mandated by Secretary-General's bulletin ST/SGB/2007/11, the United Nations Ethics Committee undertook a review of the annual reports of the Ethics

Offices of the United Nations Secretariat and the separately administered organs and programmes, and made recommendations as appropriate.

82. To date, the Committee is the sole institutionalized mechanism within the Secretariat and funds and programmes with a mandate to promote a coherent and consistent application of standards of ethics and integrity. Since its establishment, the Committee has contributed significantly to raising awareness about issues of individual and institutional integrity in the United Nations family and to addressing ethics issues coherently. It is essential that the Committee continue to be given the strongest support possible in order for it to carry on its mandated responsibility.

83. Pursuant to General Assembly resolution 66/234, in which the Assembly endorsed the conclusions and recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions (A/66/511), the process for renaming the United Nations Ethics Committee has been initiated by concerned offices within the Secretariat through a revision of Secretary-General's bulletin ST/SGB/2007/11.

84. The Ethics Office and the members of the Committee continued to participate in the activities of the Ethics Network of Multilateral Organizations. The Network was established on 21 June 2010 to support the efforts of the Secretary-General to promote system-wide collaboration on ethics-related issues within the United Nations family. The Network is a broad consortium of ethics offices and ethics functions from the United Nations system, aligned international organizations and multilateral and regional financial institutions. The Network actively supports professional development and the exchange of ethics policies and practices. The fourth meeting of the Network, jointly hosted by the World Trade Organization and WHO, was held in Geneva from 4 to 6 July 2012.

V. Conclusions and recommendations

85. In pursuing its mandate to promote and consolidate a culture of ethics, transparency and accountability within the United Nations, the Ethics Office continues to assess and strengthen its work in its core mandate areas. In addition to remaining a results-based service responsive to the Organization and its staff in the delivery of quality, confidential ethics advice, the Office proactively developed and implemented initiatives to further support the ethics and integrity culture of the Organization.

86. In order to strengthen the policy of the Organization on protection against retaliation so that it fulfils its purpose of encouraging staff to report serious misconduct that could be detrimental to its functioning and reputation, the Secretariat has initiated a comprehensive review of the current policy with a view to enhancing its effectiveness.

87. Concerning the promotion of ethical values and conduct among United Nations staff and management, in 2011-2012 the Ethics Office continued to undertake outreach missions to multiple duty stations, produced essential ethics guides, such as "Working together: putting ethics to work", and strengthened ethics training programmes. The Director of the Ethics Office further encouraged and supported ethics engagement by senior United Nations leadership, including through (a) provision of confidential ethics induction briefings with incoming and newly

appointed Assistant Secretaries-General and Under-Secretaries-General; (b) provision of confidential ethical leadership behaviour assessments for Under-Secretaries-General under the senior manager compacts; and (c) initiation of the leadership dialogues project. The Office will continue to support ethical leadership throughout the Organization in order to promote an integrity-based organizational culture.

88. In designing and conducting the first United Nations ethics and reputational risk assessment of its field operations, utilizing a repeatable and scaleable methodology, the Ethics Office developed evaluation criteria to effectively assess and measure both the perceived seriousness and likelihood of ethical risks and the impact of instituted remedial actions. Devised metrics will be applicable across the Organization to address individual, institutional and process risks and to allow for the development of effective action plans to prevent, mitigate and manage such risks.

89. Through its noted activities, the Ethics Office remains a leading advocate of the values and principles of the United Nations and will continue to promote an organizational environment committed to ethical conduct and institutional integrity.

90. **The General Assembly is requested to take note of the present report.**

Annex

2011 Financial disclosure programme compliance level

United Nations entity	*Required filers*	*Completed filings*	*Non-compliant(s)*
United Nations Secretariat			
United Nations Chief Executives Board for Coordination	1	1	–
Counter-Terrorism Committee Executive Directorate	4	4	–
Department for General Assembly and Conference Management	27	27	–
Department of Economic and Social Affairs	56	56	–
Department of Management	237	237	–
Department of Political Affairs, including special political missions	186	186	–
Department of Public Information	39	39	–
Department of Safety and Security	26	26	–
Economic and Social Commission for Asia and the Pacific	47	47	–
Economic and Social Commission for Western Asia	24	24	–
Economic Commission for Africa	82	82	–
Economic Commission for Europe	10	10	–
Economic Commission for Latin America and the Caribbean	44	44	–
Ethics Office	11	11	–
Executive Office of the Secretary-General	18	18	–
Office for Disarmament Affairs	7	7	–
Office for the Coordination of Humanitarian Affairs	19	19	–
Office of Administration of Justice	2	2	–
Office of Information and Communications Technology	18	18	–
Office of Internal Oversight Services	15	15	–
Office of Legal Affairs	20	20	–
Office of the Special Representative of the Secretary-General for Children and Armed Conflict	1	1	–
Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict	4	4	–
Office of the United Nations High Commissioner for Human Rights	18	18	–
Office of the Ombudsman and Mediation Services	2	2	–
Office of the Special Adviser on Africa	3	3	–
Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States	2	2	–
Office of the President of the General Assembly	7	7	–
Peacebuilding Support Office	5	5	–
Regional Commission New York Office	1	1	–
United Nations Joint Staff Pension Fund	64	64	–
United Nations Office at Geneva	83	83	–
United Nations Office at Nairobi	43	43	–

United Nations entity	*Required filers*	*Completed filings*	*Non-compliant(s)*
United Nations Office at Vienna	17	17	–
United Nations Office on Drugs and Crime	72	72	–
Research and training institutes	13	13	–
International tribunals and verification commissions	123	123	–
Subtotal (excluding peacekeeping operations)	**1 351**	**1 351**	–
Peacekeeping operations	1 697	1 696	1
United Nations bodies/agencies and others	1 258	1 256	2
Total	**4 306**	**4 303**	**3**